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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,056	10/11/2004	Ralf Prenzel	071308.1120 (2002P05718WO)	6152
31625	7590	02/12/2009	EXAMINER	
BAKER BOTTS L.L.P.				
PATENT DEPARTMENT				
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AUSTIN, TX 78701-4039				
			ART UNIT	PAPER NUMBER
			2618	
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			02/12/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/511,056

**Applicant(s)**

PRENZEL ET AL.

**Examiner**

BOBBAK SAFAIPOUR

**Art Unit**

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Action is in response to Applicant's response filed on 10/30/2008. Claims 1-30 have been cancelled. **Claims 31-38** are still pending in the present application. **This action is made FINAL.**

#### ***Response to Arguments***

Applicant's arguments have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of **Hronek et al. (US 7,127,264 B2)**.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 31-38** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ratschunas (WO 01/28171 A1)** in view of **Hronek et al. (US 7,127,264 B2; hereinafter Hronek)**.

Consider **claim 31**, Ratschunas discloses a method for transmitting data having multimedia content from a first communications unit (read as MMSC 2) to a second communications unit (read as MS 4) in a telecommunications network (figure 2; page 12, line 22 to page 13, line 4), the method comprising:

transmitting at least one transmission status message assigned to the data to the first communications unit (figure 2; page 12, line 22 to page 13, line 4; read as a message that the MS 4 is inactive or busy is sent); and

signaling, upon non-delivery of the data to the second communications unit, with the transmission status message, whether the data could not be delivered to the second communications unit or whether the data could have been delivered, but were not received by the second communications unit (figure 2; page 12, line 22 to page 13, line 4; If the condition is not met, a message that the MS 4 is inactive or busy is sent).

Although Ratschunas clearly discloses a non-delivery reason that the data could not be delivered to the second communications unit (figure 2; page 12, line 22 to page 13, line 4), Ratschunas fails to specifically disclose that the non-delivery reason is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.

In related art, Hronek discloses a non-delivery reason which is selected from at least two non-delivery reason, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user was out of the service area) and that the data could have been delivered, but were not received by the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user had his or her communication device turned off).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the failed delivery attempts of Hronek into the method of transmitting data of Ratschunas so the source of the message may receive a status report regarding the result of the delivery.

Consider **claim 38**, Ratschunas discloses a switching arrangement for transmitting data in a telecommunications network from a first communications unit to a second communications unit, comprising an apparatus for producing a transmission status message which is assigned to

the data to be transmitted to the second communications unit (figure 2; page 12, line 22 to page 13, line 4; read as a message that the MS 4 is inactive or busy is sent),

the apparatus providing a signaling, upon non-delivery of the data to the second communications unit, with the transmission status message to the first communications unit, whether the data could not be delivered to the second communications unit or whether the data could have been delivered, but were not received by the second communications unit (figure 2; page 12, line 22 to page 13, line 4; If the condition is not met, a message that the MS 4 is inactive or busy is sent).

Although Ratschunas clearly discloses a non-delivery reason that the data could not be delivered to the second communications unit (figure 2; page 12, line 22 to page 13, line 4), Ratschunas fails to specifically disclose that the non-delivery reason is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.

In related art, Hronek discloses a non-delivery reason which is selected from at least two non-delivery reason, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user was out of the service area) and that the data could have been delivered, but were not received by the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user had his or her communication device turned off).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the failed delivery attempts of Hronek into the method of transmitting data of Ratschunas so the source of the message may receive a status report regarding the result of the delivery.

Consider **claim 32**, and **as applied to claim 31 above**, Ratschunas, as modified by Hronek, discloses the claimed invention wherein the data could not be delivered due to an incorrect address of the second communications unit or because the second communications unit was not available within a period of validity of the data. (Ratschunas: figure 2; page 12, line 22 to page 13, line 4; If the condition is not met, a message that the MS 4 is busy is sent)

Consider **claim 33**, and **as applied to claim 31 above**, Ratschunas, as modified by Hronek, discloses the claimed invention wherein the data were not received because they were intentionally not downloaded to the second communications unit (Ratschunas: figure 2; page 12, line 22 to page 13, line 4; the multimedia message was not sent because the condition was not met,).

Consider **claim 34**, and **as applied to claim 31 above**, Ratschunas, as modified by Hronek, discloses the claimed invention wherein the signaling comprises providing an item of information concerning the non-deliverability of the data in the transmission status message (Ratschunas: figure 2; page 12, line 22 to page 13, line 4).

Consider **claim 35**, and **as applied to claim 31 above**, Ratschunas, as modified by Hronek, discloses the claimed invention wherein the non-deliverability of the data applies if one of the correct receipt of the data and of a recipient notification message concerning the data to be transmitted to the second communications unit is not acknowledged (read as receiving condition not met) by the second communications unit via a respectively associated confirmation message (Ratschunas: figures 1-3, page 12 line 21 to page to page 14 line 9).

Consider **claim 36**, and **as applied to claim 31 above**, Ratschunas, as modified by Hronek, discloses the claimed invention wherein the telecommunications network includes a switching arrangement via which the data is transmitted from the first communications unit to the second communications unit, and wherein the switching arrangement establishes the information and signals the information with the transmission status message to the first communications unit. (Ratschunas: figures 1-3, page 12 line 21 to page to page 14 line 9)

Consider **claim 37**, and **as applied to claim 31 above**, Ratschunas, as modified by Hronek, discloses the claimed invention wherein the data is transmitted via a Multimedia Messaging Service using a Wireless Application Protocol. (Ratschunas: page 1, lines 12-28)

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Hand-delivered responses** should be brought to

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bobbak Safaipoor whose telephone number is (571) 270-1092. The Examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Matthew Anderson can be reached on (571) 272-4177. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

/Bobbak Safaipoor/  
Examiner, Art Unit 2618

February 9, 2009

/Matthew D. Anderson/  
Supervisory Patent Examiner, Art Unit 2618